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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

YUE C. XIE, individually and as Personal  
Representative of the Estate of S.L.,  
deceased,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO.

**COMPLAINT FOR MEDICAL  
NEGLIGENCE AND  
WRONGFUL DEATH**

**I. JURISDICTION AND VENUE**

1.1 Plaintiff Yue C. Xie was, at all times pertinent hereto, a resident of King County  
in the State of Washington.

1.2 Plaintiff Yue C. Xie is the natural parent of S.L., deceased, and is the duly  
appointed Personal Representative of the Estate of S.L.. Plaintiff brings this action against the  
United States pursuant to the Federal Tort Claims Act, 28 U.S.C § 1346(b).

1.3 During all times relevant hereto, plaintiff Yue C. Xie was a patient of  
International Community Health Services ("ICHS") in Seattle, Washington. Daniel Copp, M.D.  
and Uyenvy Pham, M.D., as agents and employees of ICHS provided obstetrical, medical, and  
other related care to Ms. Xie for her pregnancy with S.L.

1       1.4     At all times relevant hereto, ICHS, Dr. Copp and Dr. Pham were deemed  
2 employees of the United States Public Health Service pursuant to 42 U.S.C. § 233(g). The  
3 United States is the proper defendant in this action under that provision of law.

4       1.5     Plaintiff presented an administrative claim to the United States Department of  
5 Health and Human Services (“DHHS”). More than six months have passed and DHHS has  
6 not issued a final disposition. This lawsuit is thus timely pursuant to 28 U.S.C. § 2675.

7       1.6     Venue is proper under 28 U.S.C. § 1402(b) because plaintiff resides in this  
8 district and the alleged medical negligence and wrongful death occurred in this district.

10                   **II.     FACTS**

11       Plaintiff re-alleges paragraphs 1.1 through 1.6 as though fully set forth herein.

12       2.1     On December 12, 2011, plaintiff Yue C. Xie was seen by Dr. Pham at ICHS  
13 for her initial obstetrical prenatal exam for her pregnancy with the fetus, S.L. Ms. Xie  
14 disclosed that her last menstrual cycle was on October 20, 2011 and her menstrual cycle was  
15 24 days long. Ms. Xie was 41 years old at the time.

16       2.2     An estimated due date of July 26, 2012 was calculated based on a 28-day long  
17 menstrual cycle.

18       2.3     Ms. Xie underwent two ultrasound imaging studies for her pregnancy on  
19 January 16, 2012 and March 8, 2012, noting an estimated due date of July 19, 2012 based on  
20 fetal measurements.

21       2.4     Ms. Xie presented for prenatal care visits on July 19 and July 26, 2012.  
22 Induction of labor was scheduled for August 6, 2012, which Dr. Pham calculated at 41.5  
23 weeks, if Ms. Xie did not deliver before then.

1       2.5   Ms. Xie presented to ICHS on Thursday, August 2, 2012 complaining of  
2 copious yellow vaginal discharge. Dr. Pham diagnosed Ms. Xie with bacterial vaginitis, and  
3 noted the scheduled induction of labor on August 6.

4       2.6   Ms. Xie presented again to ICHS on Friday, August 3, 2012 complaining of  
5 more copious green and yellow discharge. Gynecologic exam revealed copious yellow-green  
6 fluid in her vagina. Wet mount of the discharge was negative for clue cells and substantially  
7 worse for bacterial cells and white blood cells than on August 2. Dr. Copp prescribed  
8 metronidazole vaginal gel for treatment of bacterial vaginitis.

9       2.7   Ms. Xie presented a third time to ICHS on Saturday, August 4, 2012  
10 expressing her desire to be induced before her scheduled induction. Dr. Pham examined the  
11 plaintiff and recorded severe bacterial vaginitis and thick yellow discharge. A fetal non-  
12 stress test was performed that Dr. Pham described as reflecting “moderate variability, +1 acel  
13 (barely) [and] no decels;” “no entirely reactive strip but not really concerning.” Dr. Pham  
14 declined early induction and instructed Ms. Xie to present for the planned induction on  
15 August 6.

16       2.8   Contrary to Dr. Pham’s interpretation, the non-stress test performed on August  
17 4, 2012 was nonreactive and non-reassuring.

18       2.9   Plaintiff Yue C. Xie presented to Group Health Central Hospital for a  
19 scheduled post-date labor induction on the morning of August 6, 2012.

20       2.10   The initial evaluation of Ms. Xie revealed low to no fetal heart tones and a  
21 code blue was called.

22       2.11   An emergency caesarean section surgery was performed.

2.12 Upon incising and entering plaintiff's uterus during caesarean surgery, scant amniotic fluid, thick meconium, and diffuse meconium staining were appreciated.

2.13 Baby S.L. had Apgar scores of zero upon delivery and did not have heart tones at any time after delivery.

2.14 Approximately 17 minutes after her delivery, after unsuccessful resuscitation attempts, plaintiff's newborn daughter, S.L., was pronounced dead.

2.15 S.L. died as the result of bronchopneumonia secondary to profound intrauterine infection and fetal distress. No other signs of trauma or abnormal features were noted on autopsy.

### III. LIABILITY AND CAUSATION

Plaintiff re-alleges paragraphs 1.1 through 2.15 as though fully set forth herein.

3.1 At all material times in this case, Dr. Copp and Dr. Pham were acting as the actual, implied, or ostensible agents of ICHS.

3.2 ICHS is liable for all acts and/or omissions of its employees, agents or assigns.

3.3 ICHS, its employees, agents and assigns fell below the applicable standard of care during the medical, obstetrical, prenatal and other care provided to Yue C. Xie and S.L., including, but not limited to, one or more of the following ways:

a. misdiagnosing Ms. Xie's condition on August 2, 3, and 4 as bacterial vaginitis, despite the presence of multiple signs and symptoms inconsistent with that diagnosis:

- b. failing to consider and diagnose the presence of meconium in Ms. Xie's vaginal discharge on August 2, 3, and 4, which would have indicated fetal distress and prompted earlier induction of labor or delivery;
- c. failing to perform a post-dates evaluation of Ms. Xie on August 2, 3, or 4, including an ultrasound for amniotic fluid level and placental grade;
- d. failure to diagnose an intrauterine infection on August 2, 3, and 4; and
- e. failure to properly diagnose and respond to the nonreactive, non-reassuring fetal non-stress test on August 4 by attempting earlier induction or delivery.

3.4 As an institution providing health care services, ICHS owed plaintiff a duty to ensure adequate training of its employees and staff and to adopt and implement appropriate policies and procedures with respect to obstetrical and prenatal care. ICHS failed to ensure adequate training and adoption and implementation of appropriate policies and procedures to prevent injury and death of S.L. including, but not limited to, one or more of the following ways: post-dates evaluation for older pregnant women in the 41<sup>st</sup> gestational week or beyond; differential diagnosis and treatment of bacterial vaginitis, chorioamnionitis, and intrauterine infection; and interpretation of fetal heart monitoring strips. In these failures ICHS was negligent and fell below the applicable standard of care for this case.

3.5 ICHS, its employees, agents and assigns, owed plaintiff a duty to act as reasonably prudent healthcare providers in their care and treatment of plaintiff Yue C. Xie and S.L. ICHS, its employees, agents and assigns, in falling below the applicable standard of care in this case, were negligent in the medical, obstetrical, prenatal and other health care provided to plaintiff Yue C. Xie and S.L. The negligence of the ICHS, its employees, agents

1 and assigns was the proximate cause of the stillbirth of S.L. and plaintiff's damages as  
2 outlined below.

3 **IV. DAMAGES**

4 Plaintiff re-alleges paragraphs 1.1 through 3.5 as though fully set forth herein.

5 4.1 Plaintiff decedent suffered the following damages which survive her death,  
6 including but not limited to: disease, disability, pain and suffering, lost earning capacity, and  
7 loss of the possibility of survival.

8 4.2 Plaintiff has suffered damages including, but not limited to, medical expenses,  
9 grief, and loss of the love, care, affection companionship, services, and consortium of the  
10 decedent.

11 4.3 The aforementioned damages are in an amount set forth in the administrative  
12 claim and are to be proven at trial.

13 **V. PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff prays for damages as set forth in paragraphs 4.1 through 4.3  
15 above, for interest from the date of injury, for costs and disbursements in this litigation, for  
16 attorney's fees incurred in bringing this action, and for such other relief as the Court deems just  
17 and reasonable.

18 DATED this 25<sup>th</sup> day of February, 2014.

19 SCHROETER, GOLDMARK & BENDER

20 *s/ Adam J. Berger*

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22 ADAM J. BERGER, WSBA #20714  
23 SIMS G. WEYMULLER, WSBA #33026  
24 Counsel for Plaintiff